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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Criminal Action
7 v.) No. 1:19-cr-10079-RWZ
8 JOHN VANDEMOER,)
9 Defendant.)

10
11 BEFORE THE HONORABLE RYA W. ZOBEL
12 UNITED STATES DISTRICT JUDGE

13 SENTENCING
14 **(SEALED SIDEBAR REMOVED)**

15
16 June 12, 2019
17 2:02 p.m.

18 John J. Moakley United States Courthouse
19 Courtroom No. 12
20 One Courthouse Way
21 Boston, Massachusetts 02210

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P R O C E E D I N G S

THE CLERK: All rise, please.

THE COURT: Good afternoon. Please be seated.

THE CLERK: This is *United States versus John Vandemoer*. It's Criminal 19-10079.

Could I ask counsel to please identify themselves for the record.

MR. ROSEN: Good afternoon, Your Honor. Eric Rosen, Leslie Wright, Justin O'Connell, and Kristen Kearney.

THE COURT: Hold it. Mr. Rosen and?

MR. ROSEN: Leslie Wright.

THE COURT: Okay. And for the Defendant, Mr. Fisher.

MR. FISHER: Good afternoon, Your Honor. Rob Fisher for Mr. Vandemoer. And I'm here with Scott Seitz.

THE COURT: I'm sorry. Your co-counsel?

MR. FISHER: He's my associate, correct.

THE COURT: What's his name?

MR. FISHER: Scott Seitz.

THE COURT: Scott. I don't have an appearance for him.

MR. SEITZ: Correct.

THE COURT: How do you spell your last name?

MR. SEITZ: I'm on the record, but Seitz, S-e-i-t-z.

THE COURT: I'm sorry?

MR. SEITZ: S-e-i-t-z.

1 THE COURT: Okay. May I see counsel and Mr. Vandemoer
2 at the sidebar, please.

3 (At sidebar.)

4 * * * * *

5 (SEALED SIDEBAR REMOVED)

6 * * * * *

7 (End of sidebar.)

8 THE COURT: I think the first order of business is to
9 consider the presentence report and the parties' objections
10 thereto, which are voluminous and complicated, and I think -- I
11 have reviewed them, and I have reviewed the presentence report,
12 but I would be pleased to hear counsel tell me about any
13 particular ones that they feel strongly about or that require
14 particular elucidation beyond what is in the papers.

15 MR. ROSEN: Well, I don't think we need to go much
16 beyond what's in the papers. The two that are important to the
17 Government obviously are the ones flagged I think in both our
18 objections to the presentence report as well as the Sentencing
19 Guidelines: The 2B1.1 versus 2B4.1 issue as well as the loss
20 calculation under 2B1.1. I think with respect -- I'll just
21 sort of briefly summarize the Government's position, which is
22 that of course --

23 THE COURT: That is true.

24 MR. ROSEN: Sorry?

25 THE COURT: That is true.

1 MR. ROSEN: That the -- under the Sentencing
2 Guidelines, of course, the 1346 statute, the honest services
3 fraud is not contained within the appendix, and as such, we
4 must use the most analogous guideline. 2B4.1, the Government
5 believes, is the most analogous guideline. This is a case
6 involving bribery, and when a defendant is convicted of
7 bribery, honest services fraud, the Government believes that
8 the correct guideline to apply is the bribery guideline, which
9 in this case of course is 2B4.1. I think under 2B4.1, first of
10 all, it's called the commercial bribery and kickbacks
11 guideline, Application Note 1 specifically states that this
12 guideline covers commercial bribery offenses and kickbacks that
13 do not --

14 THE COURT: Are you suggesting that what happened here
15 was commercial bribery?

16 MR. ROSEN: Absolutely. Stanford is a commercial
17 institution. It is a massive educational institution. It is,
18 I believe, a nonprofit.

19 THE COURT: But the institution wasn't the one that
20 was doing anything. In fact, the institution is here in the
21 position of not a Defendant but an aggrieved person --

22 MR. ROSEN: Right, exactly.

23 THE COURT: -- an aggrieved institution.

24 MR. ROSEN: And Defendant was an employee of that
25 commercial institution, Stanford University, and he committed a

1 crime by depriving them of his honest services, and that's
2 exactly what 2B4.1 does. It states that an employee of the
3 commercial institution by receiving bribes does deprive the
4 victim, here in this case Stanford, of its honest services. So
5 it fits right in there specifically. I think the -- you know,
6 I read the PSR. I don't agree with their assessment of what a
7 commercial institution is. I do note that Stanford publicly,
8 you know, states how many employees it has, over, I believe,
9 about 13,000. It even talks about the technology licensing
10 that it has. It says that in 2017 and '18 it received more
11 than \$41 million or approximately \$41 million in royalty
12 revenue from 813 technologies. It's a nonprofit, but it's a
13 clearly commercial institution, and I think there's no
14 real -- and the guidelines, you know, I think point that out,
15 stating that the guidelines 2B4.1 applies to violations of
16 various Federal bribery statutes that do not involve government
17 officials, which is exactly --

18 THE COURT: But the charge here is racketeering,
19 right, racketeering conspiracy? And the underlying charges of
20 four counts of I believe -- I have forgotten -- four counts of
21 fraud and one of money laundering. So where does the bribery
22 come in?

23 MR. ROSEN: The bribery is in the specific
24 racketeering provision that involves honest services fraud.
25 It's -- if you look at Paragraph 18 of what he pled guilty to

1 and 18B, Title 18 United States Code Sections 1341 and 1346
2 relating to honest services mail fraud, and then Predicate Act
3 D, Title 18 United States Code Section 1343 and 1346 relating
4 to honest services mail fraud, I do know that the governing
5 case here is *Skilling versus United States*, and in that case
6 the Supreme Court said in 2010 in order to be convicted of
7 honest services fraud, you either have to be involved in
8 bribery or kickbacks. So before 2010, you could possibly
9 violate honest services fraud without committing a bribery
10 offense, but after 2010 you can't. That's the nexus of the
11 charge. So it's clearly a federal bribery statute mandating
12 application of 2B4.1.

13 The information that the Government filed and which
14 the defendant pled guilty to clearly indicates that the nub of
15 Defendant's conduct was that of bribery. Indeed, the fraud
16 would not have happened but for the ability to gain money for
17 the Stanford sailing program. That's set forth in Paragraphs
18 8A and 8B, the manner and means of a racketeering conspiracy,
19 and it's important to note those where it says the Defendant
20 committed the racketeering conspiracy by designating applicants
21 as purported recruits for competitive college --

22 THE COURT: You are reading the information?

23 MR. ROSEN: In the information to which he pled
24 guilty -- for college athletic teams in exchange for bribes and
25 then concealing the nature and source of the bribe payments by

1 funneling the payments through the KWF charitable accounts, the
2 Key Worldwide Foundation accounts. So under the manner and
3 means of the entire racketeering conspiracy, both prongs of
4 that focus on the bribery offense. Paragraphs 9, 12, 14 and 15
5 also include references to bribes and payments that Vandemoer's
6 sailing program received. This cannot be anything other than a
7 commercial bribery, commercial bribery case. I understand the
8 PSRs --

9 THE COURT: You called them bribes but nothing -- I
10 mean, it's not clear to me what makes them a bribe.
11 Essentially one payment, two payments.

12 MR. ROSEN: Well, multiple payments and the agreement
13 to make payments. But a bribe is simply a quid pro quo in
14 exchange of one thing for the other with the intent to defraud.
15 He defrauded Stanford by not telling them that he was doing
16 this of which they would have objected and ultimately did fire
17 him for, and also by recruiting people who were not true
18 competitive sailors to the team in exchange for these payments.
19 The nub of this is he wanted the money for the sailing program,
20 and he went about it in a criminal way that was contrary to
21 Stanford's values and ethics, as they say in their victim
22 impact statement. This is a bribery case. All these cases are
23 essentially bribery cases.

24 THE COURT: They are not charged as briberies.

25 MR. ROSEN: What?

1 THE COURT: They are not charged as briberies. They
2 are charged with RICO here with underlying conduct.

3 MR. ROSEN: Your Honor, RICO is simply a crime that
4 consists of predicate acts as defined under the statute of
5 which two of those -- two out of the five predicate acts are
6 honest services bribery which, as I stated before, *Skilling*
7 specifically defines as a bribery offense. So it has to
8 involve bribery. This is a bribery crime. The nub of this is
9 the exchange of payments for a pink envelope recruitment spot
10 is a bribery offense. That's what --

11 THE COURT: If you have five predicate acts but not
12 all of them charge bribery, nonetheless the sentence has to be
13 determined under the bribery guideline?

14 MR. ROSEN: No. You have to calculate -- under RICO
15 you have to calculate each one specifically. So you calculate
16 the regular fraud and then you have to calculate the honest
17 services fraud as well as the money -- as well as the money
18 laundering. I do know -- it's not sort of dividing them up,
19 but calculating each one of them as predicate acts separately
20 which is what the statute calls for.

21 We can group some of them, but the grouping has to be
22 accurate, Your Honor. And the accuracy here is determined by
23 2B4.1, and that's what the Government says and that's always --
24 Your Honor, respectfully that's what the case law says. The
25 Government cited to five separate circuit courts that have

1 determined that when you have a bribery offense 2B4.1 applies.
2 I think more -- and a lot of those are pre-*Skilling*. So in
3 pre-*Skilling* you sort of have to determine whether the bribery
4 guidelines apply or whether the wire fraud guidelines apply to
5 2B1.1. Post-*Skilling* you don't really have to do that analysis
6 anymore because *Skilling* has determined that it's only a
7 bribery offense.

8 So if you look at the recent District Court cases,
9 cases cited like *United States versus Kelly* in the Southern
10 District of New York in 2018, cases like *United States versus*
11 *Tanner*, the Court determined, you know, as an honest services
12 bribery case that in the honest services fraud case that 2B4.1
13 would apply, and there's another case that I found just last
14 night, *United States versus Xin Fan*, X-i-n F-a-n, from the
15 Northern District of Ohio, that was the same thing.

16 The point I'm trying to make with the case law is
17 there's nothing going the other way. This isn't really a, I
18 think, a dispute anymore. I think *Skilling* pretty much puts
19 the nail in the coffin that when you have a bribery offense,
20 where the Defendant is convicted of an offense as an honest
21 services Federal bribery case, 2B4.1 applies, and I think
22 that's clear in our response.

23 I think the statement that it's not commercial is
24 belied by all the facts, it's belied by public statements from
25 Stanford's website, it's belied by the fact that this is the

1 largest international university that accepts tuition from
2 students to teach them and also creates its own products, as I
3 just read, the \$41 million in licensing fees, employing more
4 than 10,000 employees in the Northern District of California
5 primarily, and there's nothing going the other way. So I think
6 in terms of the 2B4.1 versus 2B1.1 distinction, there really is
7 no distinction in this case, and the Court has to analyze those
8 predicates separately, Your Honor.

9 THE COURT: Mr. Fisher?

10 MR. FISHER: Your Honor, my response to that is
11 multiple-fold, I guess. You know, the Government stands here
12 and tells you that it's clear that it's 2B4.1, but in their own
13 plea agreement that they executed with them, they chose 2B1.1.

14 THE COURT: Well, that is a problem for them.

15 MR. FISHER: Correct. Another problem for them is
16 they say it as if it's so clear that nobody can miss it, and
17 yet we found a case that -- and I have great respect for AUSA
18 Rosen; I've known him a long time -- but a case that he had in
19 this courtroom in front of you, it was an honest services fraud
20 case, and it was sentenced under 2B1.1, not 2B4.1, and the
21 individual got a few months of probation. They were asking for
22 13 months of probation. The name escapes me at the moment.

23 But, again, we've also been sort of painted into a
24 corner because this has come up very recently, this issue about
25 2B1.1 versus 2B4.1. They filed their sentencing memorandum,

1 and it -- frankly, it deals less with my client, Mr. Vandemoer,
2 and much more with this issue, this as 2B1.1 versus 2B4.1
3 issue. We didn't deal with it because we didn't have an
4 objection with Probation's analysis. We signed a plea
5 agreement that said 2B1.1. They knew what kind of case it was
6 for months before we did.

7 The timeline -- I think we had 24, 36 hours to decide
8 if we were going to take that plea agreement with my client
9 after having met him 48 hours before then. They had months to
10 analyze these issues. We had hours. So we signed the plea
11 agreement thinking there potentially was some loss. When we
12 saw the analysis by Probation, that there was in fact no loss
13 by the institution, which I think is confirmed by in fact the
14 institution, they then switched this 2B4.1, saying, well, no,
15 it's not a fraud case. This is a bribery case.

16 But this has been, in the press and otherwise, sold as
17 a fraud case. In fact, when I was debating this with my
18 colleagues in my office, I said, I don't understand where the
19 bribery charge is here. It seems like they allege mail fraud,
20 wire fraud, racketeering, there's money laundering. Why didn't
21 they just charge the bribe. It's not to a Government official,
22 I guess, but then they fall back on commercial bribery
23 post-*Skilling*. But of course post-*Skilling* it seems like every
24 single honest services fraud case would have to be 2B4.1, but
25 that isn't how they're being charged or being found by

1 Probation or by Court.

2 So, again, this is a complicated issue. I'm not
3 trying to say it's clearcut, but it apparently was clearcut for
4 the government. And, frankly, when they were having press
5 conferences about this case, the U.S. Attorney himself, I
6 believe in an NPR interview, said how is this case any
7 different than rich parents who donate money to a school to buy
8 a building or a park or whatnot, how is it any different than
9 that, what's happening here? And he said, well, the difference
10 is fraud. The universities are being defrauded. Nothing about
11 bribes.

12 And, frankly, you know, I think this other issue we
13 are having, it's probably unfortunate, I think, that the first
14 Defendant to be dealing with this guideline issue is
15 Mr. Vandemoer, because I'm sure, as the Court knows and
16 probation knows and the Government knows, he is a unique
17 individual in what is a unique and unprecedented case. It is
18 unusual given the fact that he is charged with racketeering,
19 and I have tried over the past few weeks to find another
20 racketeering case where the person charged with racketeering
21 gave the bribe to the victim. I can't find anybody that can
22 find a case similar to that.

23 And the fact that no students actually got in, they
24 were not defrauded in any way. No students went to Stanford
25 because of him. In fact, none even applied. Their pink

1 envelopes were never sent back in. So Stanford was never in
2 the position where they had to say here, here's an admission
3 slot and some other student who really deserved it didn't get
4 in. That didn't happen here. So we have some unusual facts
5 bumping up against what is some disagreement with 2B1.1 and
6 2B4.1 post-*Skilling*.

7 I agree, this is not a clearcut issue by any means,
8 but what we're saying is we should uphold the plea agreement,
9 which says 2B1.1. That's what we relied upon and that's what
10 Probation relied upon and their analysis after spending much
11 more time on this than we were able to when we signed this plea
12 agreement, well, there is no loss. And only after that
13 determination was made did we hear from the Government, oh, now
14 it's 2B4.1, and we want to analyze this under the bribery
15 guidelines.

16 So before I conclude, I would like to say, though,
17 however you determine this issue, whether you agree with
18 Probation's analysis or the plea agreement or the Government or
19 us, I think it has to be clear at the end of this hearing that
20 whatever sentence you do give my client would have been the
21 sentence regardless of wherever the guideline calculations are.

22 Now, again, we have not had the opportunity to brief
23 this.

24 THE COURT: It appears the Government's view as well
25 because the Government, regardless of its view about whether

1 it's 2B1.1 or 2B4.1, has changed its mind about the
2 recommendation, and the recommendation has nothing whatever to
3 do with whatever the result would be whether -- whatever it is.

4 MR. FISHER: I agree, Your Honor. And, again, that's
5 why I say it's unfortunate that my -- John is the first one to
6 go through this because I really don't think this is about him,
7 right? I think we all know this is about the cases that come
8 after this and whether the loss is going to be applied to 2B1.1
9 for any other plea agreements that may be floating around out
10 there. Because this is the first we had heard about 2B4.1 was
11 the objection to the PSR.

12 Again, we filed our sentencing memo. I wanted to
13 focus this hearing on John. And in fact, in the days leading
14 up to this, spending time with him, his wife, his parents, I
15 have been bracing everybody by saying the first half of this
16 hearing is going to be about -- it's going to sound like we're
17 doing our taxes up here and not talking about how John's life
18 has been affected or what he did. And that is what it has
19 turned into.

20 Because the sentencing memos were filed Friday, we did
21 not have an opportunity to file a memo in response to the
22 guidelines arguments, but again, I agree with the Court, it
23 doesn't affect us so much because of the fact they're
24 recommending 13 months and the guidelines under any calculation
25 are going to be higher.

1 THE COURT: Thank you.

2 Anything else?

3 MR. ROSEN: Just very briefly, the Government has
4 conceded that it made a mistake in the plea agreement.
5 Obviously it was a very -- there was a lot going on at that
6 particular time when this was made in a very short time frame.
7 It doesn't do anything against the fact that the Court has to
8 correctly calculate the guidelines. That's simply what we're
9 asking for here. And I agree, this isn't, although it's not
10 determinative of the actual sentence that he'll most likely
11 receive, it is still critically important, both in this case
12 and cases going forward, that the correct guideline, 2B4.1, is
13 used for the bribery portion and that the loss is correctly
14 determined as to, what we believe, the gain for the Defendant
15 for the regular --

16 THE COURT: You are saying the loss to the institution
17 is the same as the gain to the Defendant?

18 MR. ROSEN: Well, I think in the situation under
19 the -- what I consider to be the regular fraud statutes, mail
20 and wire fraud, not the honest services portion, you have to
21 look at the intended gain, sorry, intended loss or actual loss.
22 And in this we believe that, you know, obviously pursuant to
23 the plea agreement, the parties have agreed that the loss here
24 is essentially equivalent to the gain that the Defendant
25 received, which is \$610,000.

1 THE COURT: Okay. Well, I must say, I'm not persuaded
2 by the notion that these five separate predicate acts, two of
3 which are the honest services accusations, should -- that they
4 should run this decision between 1.1 and 4.1, and I think
5 Probation's argument about the loss persuades me that 2B1.1 is
6 the appropriate and correct guideline to count in this
7 particular calculation. So to the extent that there's an
8 objection to Probation's calculation there, it is overruled.
9 Then there are lots more. Although this one goes on for a
10 while. That one -- I'm sorry. I skipped over Objection Number
11 1 because that had been already corrected by -- that had to do
12 with the other sentencing -- the place in which the other cases
13 are in the sentencing scheme; that is, not what the sentence
14 should be but where they are procedurally with respect to
15 sentencing.

16 And then Objection Number 2 was the victim impact
17 objection, and we now have a letter from Stanford that says
18 "Ouch. Shouldn't have happened," but it does not tell us
19 anything about any losses that it has, particularly not in
20 dollar amounts. So I'm not sure what to do with that other
21 than the fact that they are aggrieved, but there is no amount
22 given by the university.

23 That takes us to Objection Number 4, the offense level
24 computation, and that ultimately goes back to 2B1.1 versus
25 2B4.1 so it is overruled.

1 Objection Number 5 -- no, I'm sorry. Objection Number
2 4, Probation agrees with the Government, and there follows from
3 that agreement also with respect to Objections 5, 6 and 7. So
4 those have been addressed.

5 And Objection Number 4 -- Number 8 is similar.

6 Objection Number 9 pertaining to fines and special
7 assessment guidelines provision is overruled. I believe that
8 the total offense level now is 18, is it not, not 21?

9 MR. ROSEN: Yes, Your Honor. Under your calculation,
10 to which the Government objects, it would be 18.

11 THE COURT: So that objection is overruled because I
12 overruled the earlier one. Similarly, 10 -- well, similarly
13 10 -- 10 has to do with restitution. It is overruled because
14 Stanford isn't looking for any restitution. It may tell us
15 that it hurts, but it's not looking for any money.

16 Then we come to the Defendant's objections. Number 1,
17 that Probation has amended the report to reflect the objection.

18 Number 2 deals with any allegedly material benefit to
19 Mr. Vandemoer. I note it but it's overruled. I think
20 Probation is correct on that one.

21 Similarly on Objection Number 3 where Mr. Vandemoer
22 objects to part -- the phrase partly due to the fact that she
23 had fabricated sailing credentials having to be -- this being
24 one of the students who never did get there.

25 Objection Number 4, Probation has responded to that,

1 so I need not rule on it because it has accepted your
2 suggestion.

3 And Objection Number 5 objects to Probation's language
4 that the Defendant abused his position of trust by certain
5 methods, that is overruled because I think there was an abuse
6 of trust.

7 And Number 6, Mr. Vandemoer objects on the grounds
8 that the paragraph 108 is temporarily unclear and contains old
9 information, but I think that has been corrected by Probation
10 so I need not rule on that.

11 Objection Number 7 has -- also deals with an issue
12 that Probation has addressed and done.

13 And that is all the objections. So where we end up is
14 with a -- now I have to find it again -- with a total offense
15 level of 18, and the Criminal History Category of I, and that,
16 I believe, yields a guideline range of 27 to 33 months.

17 Are there any other objections to the presentence
18 report or any other comments about that?

19 MR. FISHER: Not on behalf of the Defendant, Your
20 Honor.

21 MR. ROSEN: Judge, if I could go back to Objection 3
22 from the Government. I just want to make sure the record is
23 clear. The parties agree that there was a loss here between I
24 believe \$550,000 to \$1.5 million.

25 THE COURT: What's the loss?

1 MR. ROSEN: The loss here is Stanford suffered, you
2 know, significant pecuniary loss, and I laid that out in our
3 sentencing memo.

4 THE COURT: No. I was looking at Stanford's own
5 letter, assuming it hasn't disappeared. Here it is. I mean,
6 Stanford says they had some significant out-of-pocket costs, no
7 amount, as well as time and diversion from its core academic
8 activities, no dollar amount. They acknowledged that no
9 applicant was admitted -- no applicant involved in this scheme
10 was admitted so I'm not exactly sure what that would amount to,
11 and therefore, they didn't incur any expenses in having a
12 student that then had to be dismissed.

13 And then they say that although the Defendant's
14 conduct resulted in donations to the Stanford program, they
15 think they are so tainted that they want to give it away. So
16 what are the losses?

17 MR. ROSEN: Well, first of all, in the honest services
18 context, it's the loss of Defendant's salary. The Defendant
19 was employed as an employee of Stanford. He was paid for that
20 job, and instead he took bribes. So on a very visceral
21 level --

22 THE COURT: You mean the salary paid to Mr. Vandemoer?

23 MR. ROSEN: Well, I'm talking about the pecuniary
24 losses. Under the Sentencing Guidelines, it's actual versus
25 intended loss. So under the actual pecuniary loss suffered by

1 Stanford, the Defendant has a duty of honest services to
2 Stanford, and he violated --

3 THE COURT: You are going to back to your 2B1.1 and
4 2B4.1.

5 MR. ROSEN: Well, respectfully, Your Honor, I'm not.
6 I'm just trying to state the pecuniary --

7 THE COURT: You are not talking about loss to be
8 repaid?

9 MR. ROSEN: I'm talking about loss that Stanford
10 suffered -- the guidelines are very clear. You have actual
11 loss, you have intended loss, and when the amount is difficult
12 to calculate, use the gain gotten by the Defendant. The
13 parties had agreed that the -- both the actual and the intended
14 loss were essentially difficult to calculate, so as a result --

15 THE COURT: The gain to whom?

16 MR. ROSEN: The gain to the Defendant, which in this
17 case --

18 THE COURT: What's the gain to the Defendant?

19 MR. ROSEN: \$610,000 into his sailing program.

20 THE COURT: It's not his gain. He gave it to the
21 university.

22 MR. ROSEN: It absolutely is his gain. He benefited
23 significantly by allowing it to boost his program, buying new
24 boats. It was absolutely for his intended benefit. It didn't
25 go directly into his pocket, but it certainly went to his

1 benefit. The university acknowledges that by giving away the
2 tainted funds. They don't want it. The -- Judge, I think
3 the --

4 THE COURT: Did they give away the boats, too?

5 MR. ROSEN: I don't know what's happened with the
6 boats, Your Honor. But I think the point on a very simple
7 level of what or how, you know, whether Stanford suffered
8 actual or intended loss is simply the salary issue, to which
9 Defendant pled guilty, is the honest services fraud, in which
10 the parties agree. So it's difficult to calculate, I admit.
11 It's very hard. So the Sentencing Guidelines mandate that if
12 you can't properly calculate the loss, you have to look at the
13 gain, and the gain here was \$610,000. There are other issues
14 of intended loss, and so the issue that --

15 THE COURT: What difference does this make to any
16 guideline calculation at this point since we are past 2B1.1?

17 MR. ROSEN: We have to calculate the predicate acts
18 correctly, Your Honor, and the predicate acts are wire fraud
19 and, you know, and -- both wire and mail fraud. So we have to
20 calculate those correctly. So it might not matter in terms of
21 the total offense level at the very end, but under the
22 Sentencing Guidelines, I believe 2E, you have to calculate the
23 predicate acts, and the fraud is a significant predicate act.

24 And so I just want to make sure the record is clear
25 that by everyone's admission, there is a loss to Stanford with

1 it, at the very least, the salary, and because that's very
2 difficult to calculate as to terms in percentage-wise, we have
3 to look at the gain.

4 THE COURT: I don't think either Probation or the
5 Defendant or I suggested that there was not fraud, both regular
6 fraud and honest services fraud.

7 MR. ROSEN: And I agree, but the issue is not whether
8 there is fraud. The issue is how do you calculate that under
9 the guidelines under 2B1.1. We have to look at the -- either
10 the loss level, which is hard -- which is hard to determine for
11 the reasons that I've set forth or if it is hard to determine,
12 you have to look at the gain. Gain here is a much better proxy
13 because gain is the amount that he took in and sold the spots
14 for.

15 The other objection that the Government has is simply
16 in terms of, you know, A, I don't think Stanford's letter was
17 meant to be the be-all and end-all of the guidelines analysis.
18 They were just simply writing a letter to show how they've been
19 impacted. But there was certainly the intent to get those
20 students into Stanford. That was the intent with Rick Singer
21 and was the intent of John Vandemoer.

22 So the fact that they didn't show up and the fact that
23 tuition wasn't spent on them specifically, that should be
24 irrelevant to the Court's analysis of determining loss. The
25 second issue is this, and I cited a case law about -- in the

1 brief is simply about selling at the price of a spot. He took
2 a spot, and he sold it. The price was \$500,000.

3 If Stanford had auctioned that spot off for much more,
4 offered it off to the general public, clearly the price would
5 have been more significant, and that's important because it
6 shows the loss to Stanford. The loss, as other cases have
7 determined that I cited in the sentencing memo, showed that in
8 analyzing the loss of Stanford, you look at the amount that
9 someone paid and the amount that Stanford would have paid had
10 they sold that to the general public.

11 And obviously, had the scheme succeeded, had they been
12 admitted, the quality of the students would have gone down and
13 would have reduced the perceived value of the Stanford
14 education, yet another loss. So, Judge, I respectfully
15 disagree that there are a lot of losses, a lot of pecuniary
16 losses. They are hard to calculate. And so both parties agree
17 in crafting the plea agreement that gain was the appropriate
18 proxy for that -- for the loss. So I respectfully --

19 THE COURT: Whose gain?

20 MR. ROSEN: The gain to the Stanford sailing program
21 as accounts controlled and benefited to Mr. Vandemoer. Where
22 he chose to put the money is irrelevant.

23 THE COURT: I don't find the gain to the sailing
24 program. I have somewhat difficulty understanding the dollar
25 value of the gain to him.

1 MR. ROSEN: The gain to the Defendant -- he had the
2 power to direct the bribes to wherever he wanted to direct
3 them. He chose not to direct them to himself.

4 THE COURT: So it's a psychological gain?

5 MR. ROSEN: It's not a psychological -- he had the
6 ability to spend that money and he did spend it. He bought
7 boats with it. Where he chooses to --

8 THE COURT: So there is a gain to him for spending it
9 for Stanford's sailing program, and there's a gain to Stanford
10 sailing program because they got it?

11 MR. ROSEN: He was a coach of the sailing program,
12 Your Honor. He directly benefited from having new boats and
13 salaries he could pay assistant coaches for. We agree --

14 THE COURT: I'm not disagreeing that he may have
15 benefited. He certainly benefited psychologically by improving
16 his program. I just have difficulty understanding how his
17 getting let's say \$10 and then giving that to Stanford is a
18 gain to him of \$10 and -- unless, of course, he takes tax
19 deductions for that, which is clearly not an issue here, at
20 least not in this case.

21 MR. ROSEN: Right, no.

22 THE COURT: But ultimately the gain was Stanford's,
23 not his. The monetary gain was Stanford's, not the
24 Defendant's.

25 MR. ROSEN: Well, I think, Your Honor, respectfully I

1 disagree, but I think more importantly under the guidelines the
2 Court -- it specifically states that in gain, the court shall
3 use the gain that resulted from the offense as an alternative
4 measure of loss but only if there is loss that can reasonably
5 be determined -- that cannot be reasonably determined. So the
6 guideline specifically states you don't look at the gain to the
7 Defendant himself personally; rather, the gain from the
8 offense; and it's undisputed by everyone involved that the gain
9 from the offense was --

10 THE COURT: And what difference does that make?

11 MR. ROSEN: It makes -- Judge, respectfully, we have
12 to calculate the predicate acts correctly, and the predicate
13 acts here, it adds a significant amount to the guidelines. It
14 adds 14 to the level of a level of 21, and you would --

15 THE COURT: So are you now challenging the guideline
16 result that I gave earlier?

17 MR. ROSEN: I'm -- I didn't quite understand, Your
18 Honor, respectfully, the -- how the guideline calculation was
19 derived with the -- I want to make sure our objection was heard
20 and that there was a determination for the record.

21 THE COURT: It was based on the presentence report.

22 MR. ROSEN: And we objected to that.

23 THE COURT: And I overruled the objection.

24 MR. ROSEN: But I wanted to make sure that the record
25 was clear, Your Honor, respectfully, that in terms of how you

1 actually derived -- that there is a -- that there was loss to
2 Stanford, which wasn't -- which doesn't seem to be debated by
3 any other parties, and that there was gain that resulted from
4 that, and it seemed to be missing from the analysis of exactly
5 why the Court disagrees with that. And I just want to make
6 sure the record is clear on that. If that's your final
7 decision, I accept that, but I think I have put forth at least
8 four or five ways Stanford suffered pecuniary loss, which isn't
9 debated by any of the parties.

10 I respectfully ask, Your Honor, to go back and at
11 least for that one, the fraud calculation under 2B1.1, I
12 respectfully ask that we reconsider the Court's objection
13 because it's very important for the Defendant. It changes the
14 guideline by one point -- or one or two points, and it's also
15 important for the other cases.

16 THE COURT: What are you saying is the correct
17 guideline calculation?

18 MR. ROSEN: The correct guideline as agreed to in the
19 parties' plea agreement is 20, not 18, Your Honor.

20 THE COURT: But you have aggregated the plea
21 agreement. I mean, I don't understand how you can stick to the
22 20 while you're suggesting at the same time that the wrong
23 portions of the guidelines were used.

24 MR. ROSEN: Judge, we're not abrogating the plea
25 agreement. We strongly stick by the plea agreement.

1 THE COURT: No, but the calculation. The calculation
2 of 20 was based on one set of guideline rules but now you want
3 another set of guideline rules.

4 MR. ROSEN: Judge, respectfully, that's not accurate.
5 The predicate act has to be calculated individually. What
6 happened when we were calculating the predicate -- when we were
7 calculating the guidelines initially, we didn't calculate the
8 predicate acts for the honest services properly. But we did
9 calculate the predicate acts to be -- for the regular fraud,
10 the wire and mail fraud properly. Under the RICO guidelines,
11 you have to look at each predicate act as a separate crime and
12 calculate it separately. That's all I'm asking to do now. I'm
13 asking simply to enforce the plea agreement as it stands and
14 to --

15 THE COURT: But you told me it was not correct?

16 MR. ROSEN: In certain respects, and the other
17 respects it was correct.

18 THE COURT: So what? I mean, so you have one correct
19 piece for a calculation, and then you say that another piece is
20 wrong and --

21 MR. ROSEN: Yes.

22 THE COURT: -- how do they get together?

23 MR. ROSEN: Well, they get together --

24 THE COURT: You can make one charge of RICO conspiracy
25 through the five predicate acts, and now you are telling me

1 that certain of the predicate acts should be calculated by 1.1
2 and certain other ones by 4.1 and then we end up with two
3 different guideline calculations for two different predicate
4 acts, and what do we do with that?

5 MR. ROSEN: You take the higher one. I believe that's
6 set forth in --

7 THE COURT: But that would not be in accordance with
8 the plea agreement.

9 MR. ROSEN: It absolutely is in accordance with the
10 plea agreement. The error in the plea agreement was that we --

11 THE COURT: But it says to do it on the basis of 1.1.
12 I mean, it's an inconsistent plea agreement, inconsistent
13 calculation. It uses 1.1 and ends up with 4.1.

14 MR. ROSEN: Judge, the only inconsistency there is
15 that we didn't properly characterize the honest services
16 portions, the predicate acts as separate, and that it should
17 have gone over to 2B4.1. It doesn't mean we are abrogating it
18 as to the regular fraud. 2B1.1 is the controlling guideline
19 for RICO, and that says when there is more than one underlying
20 offense, treat each underlying offense as if contained in a
21 separate count of conviction, and then to determine whether the
22 result is in the greater offense level, and it says use
23 whatever subsection results in the greater offense level. So
24 we're not abrogating the plea agreement. We're simply trying
25 to apply 2B1.1, the underlying RICO guideline, correctly here.

1 It's a difficult task admittedly.

2 We messed up back in March when we were crafting the
3 plea agreement. We are not abrogating it. We're certainly not
4 walking away, and we are actually recommending a sentence much
5 less than what's called for in the plea agreement. We are
6 asking to calculate the guideline correctly.

7 THE COURT: I mean, given that the recommendation is
8 less, I don't know what we are fighting about other than for
9 your other cases.

10 MR. ROSEN: Judge, I think -- well, respectfully, Your
11 Honor, I think the First Circuit says you have to calculate
12 correctly. It's not an academic exercise. We're not trying to
13 make it an academic exercise. All we're asking for is that --
14 I've set forth now three or four ways Stanford suffered
15 pecuniary harm. I've set forth ways in which it's very
16 difficult to calculate, and that the gain under the guidelines
17 of the offense, not to the Defendant but of the offense total,
18 is \$610,000. That's all we're asking for is just to calculate
19 that correctly.

20 THE COURT: Okay.

21 MR. FISHER: Your Honor, if I may add, I think we can
22 get there quickly -- I think if the Court agrees that Probation
23 got the calculation right, that there was in fact no loss. I
24 know the Government now in their sentencing memo did lay out
25 four or five reasons why they think that Stanford lost money.

1 I think none of them are good reasons that Stanford lost
2 anything.

3 In fact, in Stanford's own letter that they wrote,
4 they claimed a benefit that they are trying to unload of
5 \$770,000. So if we're going to say that John Vandemoer had an
6 intent to defraud the university for something of value, I
7 think that's mistaken because if no students got in, first of
8 all, but if any did get in, these were not scholarships. They
9 were not sailing scholarships at Stanford. All of these kids
10 would have been paying full freight. In the salary argument
11 they raised, there's case law right on point. We would have to
12 have a full hearing, and the Court would have to determine what
13 portion of his salary was not earned by him. And there's no
14 allegation anywhere that he wasn't earning his salary as the
15 head sailing coach.

16 So I think for us to get where the Court needs to be
17 based on your prior ruling would be that Probation's
18 calculations are right. There is no loss because even though
19 the plea agreement -- there can be an agreement that binds the
20 Government and binds us potentially. It does not bind you. So
21 I think that's how we get to where we need to be, and the
22 guideline could be 18. And then -- I know we've been here
23 awhile -- then we can get on to talking about Mr. Vandemoer and
24 everything he's been doing for the past, you know, however many
25 months.

1 Again, I had a concern this hearing was going to turn
2 into this argument about 2B1.1, 2B4.1, because it wasn't
3 foreseen. And I know it's complicated. I'm not blaming the
4 Government it happened, but it really doesn't affect my client.
5 So I think if the Court found that there is no loss to
6 Stanford, because I have not seen -- other than the sentencing
7 memo, I haven't seen any evidence that they've lost something
8 of pecuniary value. It's certainly not in their letter, and I
9 have seen no documents to support it. There are theories, but
10 I think none of them have basis in fact. So I think the
11 fastest way for us to get to what does Mr. Vandemoer deserve at
12 the end of the day is if the Court agrees with Probation, which
13 now in hindsight, we do, the Defendant, because of course now
14 there's been plenty of months in between the scurry to get this
15 agreement signed before the indictments came down and became
16 public, I think with hindsight being 20/20, they make a very
17 compelling, solid foundation point, that there is in fact no
18 loss to the university.

19 THE COURT: I accept the calculation by the Probation
20 officer with all of the details that she has given us. I do
21 not find any loss by -- that I can in any way calculate by
22 Stanford or based on the letter that Stanford has sent and will
23 not do any further -- I will make no further attempt to try to
24 figure out what loss there might be or what gain there might
25 have been. So your objection to that ruling is noted.

1 And we end up with the same calculation that I said
2 previously, a total offense level of 18, Criminal History
3 Category I, and the guideline range of 27 to 33 months.

4 And I will now hear the Government's recommendation.

5 MR. ROSEN: Thank you.

6 May I get some water, Your Honor?

7 THE COURT: I'm sorry?

8 MR. ROSEN: May I just get some water?

9 THE COURT: Of course.

10 MR. ROSEN: Judge, on March 12th of 2019, 50
11 individuals were charged by complaint, indictment and
12 information. Defendant John Vandemoer, the former sailing
13 coach at Stanford, was the first coach to plead guilty, the
14 first to be sentenced, as we know. The sentence you impose
15 today, Your Honor, will set the tone for these cases going
16 forward. The Government strongly believes that a sentence of
17 imprisonment here will send a powerful message to the
18 Defendant, to the other defendants in this case, and to those
19 considering using bribery and fraud to secure college
20 admissions at elite universities for children, students and
21 clients.

22 The message is simple, but it does need to be said.
23 If you pay or receive bribes, if you lie and cheat and if you
24 engage in a scheme that ultimately results in the theft of
25 college admissions spots from someone who deserves it, you will

1 be criminally prosecuted, and you will go to prison.

2 The sentencing factors set forth in Title 18 United
3 States Code Section 3553 commands us in fashioning a sentence
4 to examine the need for the sentence imposed. And why is the
5 sentence of imprisonment needed here? It is needed because
6 this case goes far beyond John Vandemoer and the \$610,000 he
7 agreed to accept. Rather, the damage that the college
8 admissions scheme inflicted, as outlined in numerous
9 indictments, complaints and information, was significant and
10 far-reaching.

11 As Stanford noted in its victim impact letter,
12 Defendant's actions together with Singer undermined public
13 confidence in the college admissions system and reflected
14 negatively on Stanford and its hardworking honor student
15 applicants. Thousands of news articles have been written about
16 the various schemes and players here, charged and uncharged,
17 many interesting and illuminating, but for the purposes of
18 sentencing, what is striking is how many articles focus on how
19 the cheating and bribery scandal negatively impact the
20 perception current high school students and college students
21 have about the whole college admissions process.

22 The *New York Times* invited students to comment about
23 how the college admissions scandal impacted their lives. The
24 comments were then published by this newspaper on March 21,
25 2019. Many of the comments demonstrated exactly why this Court

1 needs to send a powerful message to would-be cheaters that such
2 criminal conduct will not be tolerated.

3 Emily from Carlisle, Pennsylvania, writes, "While I'm
4 not surprised, I am appalled this has been going on for years
5 that parents and people of money feel the entitlement that they
6 do. Thousands of students across the country, myself included,
7 work tirelessly in several jobs, are heavily active in their
8 communities, and maintain high and real grades of scores just
9 to have a sliver of a chance to be accepted to our dream
10 school, and to be able to afford it without an enormous amount
11 of student debt."

12 Anya from Philadelphia, "Families travel to the United
13 States in hope for better opportunities for them and their
14 children. Students work long hard hours to bring up their
15 grades and prepare for tests, yet many of these students don't
16 get into the schools of their choice. It's horrible to think
17 that these innocent people lost their chance to someone who
18 didn't go into this school fairly."

19 Dalton from South Carolina, "When I look at this I
20 feel really bad. Students like me work really hard for our
21 future, while some kids who don't try at all are given the
22 opportunity to go to the top colleges without putting in an
23 ounce of sweat. I stress ever day thinking about getting into
24 college, and knowing that it could be taken away because of
25 people like this is terrifying."

1 Izzy from Vermont, "As a high school student beginning
2 the college admissions process, these dishonorable acts
3 dishearten my confidence and leave me regarding every sleepless
4 night and study session as meaningless, able to be signed away
5 by a simple paycheck."

6 And one final thought from Thomas from North Carolina.
7 "I have a very strong opinion on this that can be boiled down
8 to three simple words: It's not fair. Students work hard to
9 get into college. They constantly push to achieve their
10 dreams. They sacrifice time, sleep and even their passions
11 just to get where they want to go. Sometimes they don't get
12 in. It's sad, but it happens, and it often means that the
13 person who did get in worked harder, and that the person who
14 didn't get in might need to work harder. That's fair. What
15 isn't fair is a hardworking student not getting into the school
16 of their dreams because they weren't born with deep pockets.
17 That's unfair."

18 I echo the words of Thomas from North Carolina. This
19 is unfair. This is totally unfair. The system is rigged. It
20 is broken. It is crying out for reform and change. If we fail
21 to take these crimes seriously, if we give just a slap on the
22 wrist instead of real punishment, if we minimize Defendant's
23 conduct or shrug off this case as just a few bad apples, we are
24 shortchanging not only the criminal justice system but all
25 those kids in high school who are working hard every day in an

1 effort to improve their own lives and get into the best school
2 they can honestly and through hard work. Those kids just want
3 this Court to acknowledge that when they apply to college and
4 pay the application fee that they get a fair shake, a chance
5 based on merit and honest assessment of one's own credentials
6 for admittance to that university. These kids deserve that,
7 our society needs that, the 3553(a) factors in stating that we
8 need to look at the seriousness of the offense in imposing
9 sentence mandates that. The danger in this case and the
10 related cases is not in overpunishment but rather in failing to
11 send a message that this cheating and bribery is taken
12 seriously.

13 I do not dispute the premise of Defendant's sentencing
14 memorandum, which is that Defendant is a good person. I do not
15 dispute that the Defendant loves his family and his children,
16 the Defendant loved his employment at Stanford. For all
17 intents and purposes, Defendant appears to be a great sailing
18 coach.

19 As Your Honor knows, good people sometimes do bad
20 things, and Defendant's good work should be taken into account
21 at sentencing as the 3553(a) factors command us to do. And the
22 Government in recommending a sentence not only far below the
23 guideline level but far below what we're entitled to recommend
24 in the plea agreement has taken that into account. But the
25 factors also state that this Court afford adequate deterrence

1 to criminal conduct, not just for Defendant himself but for
2 others.

3 Imagine if you are a parent willing to pay a bribe to
4 get your son or daughter into school, if you're only going to
5 be given probation, why not take that risk. Imagine if you are
6 a coach and you see that John Vandemoer only gets probation for
7 \$610,000 in bribes, well, you might tell yourself if the courts
8 don't really care, maybe it's more of a gray area than a bribe.
9 And then imagine if you're a kid who reads in the newspaper
10 about how some smalltime drug dealers go to jail, as many
11 should, but that the wealthy and powerful get off. Is this a
12 message we want to be sending, that the rules apply to some but
13 not to all?

14 In determining what sentence to impose, Your Honor, we
15 often look to what similarly situated defendants have received.
16 It is difficult to find sentencing comparisons in this case, we
17 tried, in reflecting a particular conduct. And Defendant in
18 his memo highlights a few, such as the *Desper* case before this
19 Court where the Defendant, I think, was trying to sell a fake
20 Vermeer painting on craigslist for \$100 million, a painting
21 that he did not have, and the scheme obviously could not work.
22 And other cases are in there, like the Vernell Burris case,
23 which involves cooperation, which is not an issue here.

24 More applicable are the recent cases in the Southern
25 District of New York involving bribery of college basketball

1 coaches, associates and high school students. In those cases
2 Emmanuel Richardson at the University of Arizona received three
3 months' incarceration for \$20,000 worth of bribes. Tony Bland
4 of the University of Southern California, he took \$4,100 in
5 bribes, received probation. In a \$100,000 bribery scheme
6 involving high school athletes, James Gatto of Adidas received
7 nine months of incarceration, Merl Code of Adidas received six
8 months, Christian Dawkins received six months of incarceration,
9 and of course the bribe amounts in those cases were much lower
10 than that of Defendant, who has admitting accepting or agreeing
11 to accept \$610,000. Finding comparisons is of course more of
12 an art than a science, but even so, Defendant's conduct calls
13 for a sentence of imprisonment.

14 Judge, this is a serious case involving serious
15 consequences, not only for the Defendant, who lost his job and
16 who has been criminally convicted, but for Stanford, the other
17 universities, for the parents who paid bribes and engaged in
18 other fraud in order to gain entrance to those elite
19 universities, and most importantly, for the students and
20 parents who play by the rules and who submitted honest and
21 accurate applications to those very colleges.

22 Probation here would not only be a slap on the wrist
23 for the Defendant, but a signal to the honest and hardworking
24 students who have worked so hard and are entitled to a fair
25 shake that those who have the power to make change and send a

1 message are reluctant to do so.

2 For these reasons and the reasons set forth in our
3 sentencing memo, the Government respectfully requests 13 months
4 of imprisonment, which is sufficient but not greater than
5 necessary to achieve a just result.

6 THE COURT: What else?

7 Just 13 months imprisonment? No supervised release,
8 no -- nothing else?

9 MR. ROSEN: Sorry. One year of supervised release.

10 THE COURT: I'm sorry?

11 MR. ROSEN: One year of supervised release, Your
12 Honor.

13 THE COURT: No special assessment?

14 MR. ROSEN: Sorry. The \$100 special assessment.

15 THE COURT: And no fine?

16 MR. ROSEN: A fine -- I think he can afford it, a fine
17 at the low end of the guidelines, Your Honor.

18 THE COURT: What's that?

19 MR. ROSEN: Let me check my book. It would be
20 \$10,000.

21 THE COURT: Mr. Fisher?

22 MR. FISHER: Your Honor, as my brother just
23 highlighted in other cases where coaches and cases that are
24 somewhat similar to this took bribes, they profited personally.
25 As I said multiple times today, as Your Honor noted at my

1 client's change of plea months ago, he did not benefit from
2 these bribes. They didn't go to him. They went to Stanford.
3 This is a gentleman with his heart in the right place.

4 Stanford, even in their letter, admit that no students
5 that were part of this conspiracy, the conspiracy for
6 Mr. Vandemoer in Stanford, got in. No student spots were taken
7 by unqualified sailors or applicants and someone else didn't
8 get in, okay?

9 What you have here is somebody who has been punished
10 enormously, and jail is not going to do anything more than
11 punish his own family. He has -- when I first met him, he had
12 a great job at Stanford. He was making good money. He lived
13 in housing at Stanford. He has two young kids. He had a car
14 stipend. He was living his dream. He gave everything to those
15 students on that sailing team.

16 Once this indictment dropped and he pled guilty a
17 couple of months ago before you, he lost his job, he lost his
18 housing. Him and his kids had to move to another home that
19 they're living in thanks to friends of the family. They lost
20 their health insurance. They lost their car stipend. This man
21 has been absolutely crushed. And given the media attention
22 surrounding this case, and not just because of Mr. Vandemoer,
23 because of the celebrities involved here, as Mr. Rosen said, 50
24 other individuals, and I would like to note of all those
25 individuals, everybody but Mr. Vandemoer gained something.

1 Even the parents who may have paid \$15,000 so their son or
2 daughter's ACT test could be changed, they gained something.
3 He got nothing.

4 He gave every single dime to his sailors, to Stanford,
5 and they still have the money. He could have pocketed that.
6 He didn't. Every other example Mr. Rosen gave, people pocketed
7 the money, and that, I suggest, makes it a much different
8 crime. Again, we have not been able to find someone who pled
9 guilty or was convicted of racketeering and gave all of the
10 proceeds of the crime to the victim. That's what he did here.
11 And in exchange for it, the other side of the quid pro quo, no
12 students actually got in. It was an inchoate crime, and yet he
13 has been absolutely crushed because of this.

14 So let the media report today, let it be heard wide
15 and loud that if you do do something like this in the future,
16 you will lose everything. And I would point you to the
17 conclusion of the Government's sentencing memorandum. They say
18 a term of incarceration, if needed, to show that such crimes
19 when uncovered will yield concrete sanctions and to assure that
20 others in comparable positions of trust think twice before
21 engaging in this kind of conduct.

22 Your Honor, I think it's pretty clear after the press
23 this case has gotten that every college coach in the country,
24 or frankly, every person that works in a college in the country
25 understands the gravity of this situation. But what you will

1 have if you send Mr. Vandemoer to prison for 13 months or six
2 months or whatnot, he will end up, I'm pretty confident,
3 serving more time than potentially some of the parents who paid
4 a bribe to either Mr. Singer, that went to a school, or
5 influenced the SAT or the ACT that colleges may have relied on.
6 Their guidelines could be three to six, and I can assure you
7 that many of them, from the celebrities, the multi-millionaires
8 that are involved in this case did not lose their housing, did
9 not lose their health insurance, are not worried about their
10 car breaking down because they lost their car stipend. In
11 fact, Mr. Vandemoer's wife -- their car did break down on her
12 flight to come out here to be with him for this sentencing.

13 And as we highlight in our sentencing memo, he's a dad
14 of two very young children, a three-year-old and a
15 16-month-old. Those are the folks who are going to suffer if
16 he goes to prison. And as the Government can see, this really
17 is not about specific deterrence. John Vandemoer is not going
18 to reoffend. This gentleman has lived a wonderful life. He
19 was a great son to his parents, a great college student, who's
20 been an impeccable coach. Friends and family and ex-sailors
21 love him. My e-mail is filled now with -- and we submitted
22 many, many letters, Your Honor, and I hope you were able to get
23 these and read them. They are phenomenal. There are so many
24 more people that reached out to me and still reach out to me
25 even today, what can we do. We feel horrible for John. He has

1 lost so much, and we want to do everything we can to help him
2 rebuild his life.

3 And I think what's very telling about my client is how
4 he has reacted to all of this. He had about 24 to 36 hours to
5 make a decision that has changed his life, a decision to sign
6 that plea agreement. We spent a very long day at my office
7 here in Boston. Not once did he complain about the effect this
8 was going to have on him. He was worried about the effect it
9 was going to have on his wife, on his two small children, his
10 parents who are here today, his family, and also the sailors on
11 his team. After we signed the agreement he said, "Rob, when is
12 this going to become public? Because my team, the sailors have
13 an important regatta coming up this weekend, and I would feel
14 horrible for them if they find out about this before that
15 regatta." And that was the last regatta that he coached.

16 This was a life-altering event for him. He was about
17 to lose everything he worked for and have the media chase him
18 around and be written about by all the major newspapers. TV
19 calls us. Everybody knows about this case. Everybody he's
20 ever met have reached out to him and knows what he has done.

21 Another main concern is now when his kids get older
22 and they Google his name and what they're going to learn about
23 this. And it's so important to him that they learn the truth,
24 that he did in fact do something wrong. He admitted it. We
25 pled the first day that the story broke, Your Honor, right

1 after the cooperator. He learned his lesson. He accepted
2 responsibility. But he wants them to understand the true role
3 he played, that he did not pocket \$770,000 or \$610,000, that
4 that went to his program, because his program was one of the
5 most important things in his life but for his kids and his wife
6 and his family. And I think that's reflected in these letters
7 here, Your Honor.

8 And one letter I want to draw your attention to is by
9 Harold Robinson. He was Mr. Vandemoer's rabbi. He's also a
10 rear admiral in the Navy, and I think he captured what happened
11 to John here when he says "John's failure to grasp" --

12 THE COURT: I'm sorry. Which number is that?

13 MR. FISHER: I'm sorry. It's Page 20.

14 THE COURT: I'm sorry?

15 MR. FISHER: It's Page 20. And it's from Harold
16 Robinson. And he says essentially "John's failure to grasp
17 that his loyalty to the sailing program was excessive,
18 misdirected, and through it he failed his students, his family
19 and himself." Although he also goes on to say in all that time
20 that he had worked at -- as a Jewish chaplain at a Federal
21 penitentiary, he said "All the time I worked with them, no
22 inmate displayed the authentic remorse, the clear understanding
23 of personal error, and the need to return to the high ethical
24 and moral standards resident in his character as displayed by
25 John."

1 And he goes on to say that he has never ever asked for
2 leniency to anybody from any court or civilian or military
3 authority, and he's taking extraordinary exception for John
4 because he understands the human he really is.

5 And John, since this has happened, since he has been
6 crushed, his life has been essentially turned upside down for
7 him and his family, some people curl up in a ball or either
8 turn to drinking or go into a state of depression. John is
9 working on getting his MBA. Every time I call him he has some
10 event scheduled where he is tutoring young sailors and working
11 at different regattas on the weekend. He is doing anything and
12 everything he can to rebuild his life. He started the day
13 after he signed the plea agreement, and he's been working
14 extremely hard on that. So you have a gentleman here today who
15 has taken all the right steps.

16 Before this happened he lived an exemplary life, and
17 that's noted in all these letters from people who have known
18 him for years, lawyers, doctors, rabbis. In fact, the last
19 letter, Your Honor -- the second-to-last letter on Page 33 and
20 34 is written by an Olympian, Udi Gal, an Israeli Olympian who
21 knew John, and respected him greatly. And he says here "I can
22 say without a doubt that our community, the sailing community,
23 will lose out tremendously if John is no longer a part of it,"
24 and he then said, "Over the past few months dozens, if not
25 hundreds of families, parents, people from the sailing

1 community, young sailors, adult sailors are reaching out to me
2 offering their help, ensuring their concern and support. While
3 I knew that John was very well regarded, I am astounded by the
4 sheer amount of support and concern I have seen coming from a
5 diverse group of people," and I think that's reflected in these
6 letters.

7 Your Honor, he admits he made a mistake. He took
8 ownership of it, he was remorseful, and he has paid a very,
9 very severe price. The collateral consequences are enormous,
10 and if you send him to jail, I don't think that's going to be
11 punishing him. When he gets out, he'll start over again, get
12 back to his MBA, he'll teach, he'll do what he needs to do to
13 support his kids. That will hurt his wife and his two young
14 children, and frankly, society at a large. We will pay to put
15 him in a Federal penitentiary instead of him working to rebuild
16 his life. And frankly, I think he's shown the world in this
17 case that he made a mistake, he regrets it horribly, and he's
18 paying a price for it, but the only price to be paid isn't just
19 incarceration. That's not a one size fits all, particularly in
20 this case where he has now lost everything else.

21 Sometimes there's no other way to punish people. They
22 may be a danger to the community and need a specific deterrent
23 to teach them a lesson. Even the Government agrees that's
24 really not the case here. This is a unique situation with an
25 individual who has learned his lesson and will do everything he

1 can to get back to society and his family. And with that, we
2 ask for a one-year term of probation with any other, I guess,
3 requirements from Probation. There's no drinking or drug use
4 involved, so -- I know the Government says he has the ability
5 to pay a fine, but I can assure you finances are extremely
6 tight. His wife is now the sole breadwinner. They lost their
7 housing, lost their car stipend, lost their health insurance,
8 so things are very tough for them right now, and I would ask
9 the court not to impose a fine. Thank you.

10 THE COURT: Mr. Vandemoer, do you wish to say
11 anything?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Please do.

14 THE DEFENDANT: Thank you.

15 Your Honor, the last three months has given me a lot
16 of time to reflect on my mistake and who I am. I have learned
17 many things through this reflection and know two things to be
18 true. I spent my life trying to be a good moral person, but
19 here I made a terrible mistake, and my mistake impacted the
20 ones I care about the most in ways I could not imagine. I
21 would like to take the time to apologize to the ones I have
22 hurt.

23 First the Government and the Court, I took up your
24 precious time and resources. For that I am sorry.

25 Next, Stanford, an amazing school with incredible

1 people. The students, alumni, staff and faculty do not deserve
2 to be looked at under the cloud that I have brought over them.
3 I am truly sorry for bringing you into this mess. You do not
4 deserve it.

5 To the current sailing team, to the coaching staff, to
6 the team's alumni, and the collegiate sailing community, I am
7 devastated that this has impacted you all. I'm devastated that
8 the program and the sport would be looked at poorly because of
9 my actions. You had no part in it and you did not deserve it.
10 I have spent my career stressing that some things, namely
11 integrity and your reputation, are more important than winning.
12 In this manner I completely failed to live up to that standard.
13 I want to thank you all for your support and forgiveness these
14 last three months and will be eternally sorry to you all.

15 Most importantly to my family and friends, I'm sorry
16 to have dragged you into this. My friends, I am sorry that you
17 had to question who I am and how you will act around me, but I
18 thank you for standing by me and seeing me for who I am and not
19 only for my mistake.

20 My sister, Jennifer, who has been an amazing source of
21 support that always reminds me of who I am. I love you and I'm
22 truly sorry.

23 My father, I dragged your good name into the scandal.
24 That will haunt me forever. You have stood by me and reminded
25 me to keep my head high. I love you and I am truly sorry.

1 My mother, who will never let me forget my passion and
2 fire to be a better person, to be a father, to be a husband. I
3 love you, and I'm truly sorry.

4 My wife, Molly, has shown unbelievable courage and
5 bravery through all of this. You are a true role model for our
6 children and for me. I love you, and I am truly sorry.

7 My children, Nicholas and Nora, are too young to
8 understand this yet, but it won't be long. Some day soon I'll
9 have to explain to them that their dad is certainly not perfect
10 and that he makes mistakes. I hope they will in time also see
11 someone who takes responsibility for his mistakes and tries to
12 handle it with grace and honor. I love you, and I'm truly
13 sorry.

14 In the last three months I've been fired, put my
15 family's financial security in jeopardy and caused us to lose
16 our housing. My career that I have worked passionately for 20
17 years is gone, and my freedom is in jeopardy, endangering my
18 ability to be there for my kids.

19 I deserve all of this. I caused it, and for that I am
20 deeply ashamed.

21 Finally, Your Honor, I want to tell you how I intend
22 to live from this point forward. First, I will never again
23 lose sight of my values and who I am as a friend, son, brother,
24 husband and father.

25 Second, I will not curl up and feel sorry for myself.

1 I made a mistake. I am accepting responsibility, and I am
2 bound and determined to move forward with my life in a way that
3 honors the love and support that I have gotten over the last
4 three months from my family, my friends and my sailors. Thank
5 you for your time.

6
7 THE COURT: The RICO statute was passed sometime I
8 think in the late '70s, '80s to combat the Cosa Nostra, and now
9 it's being used in this particular context, which it's a heavy
10 statute.

11 I have read the transcripts of telephone calls by
12 Mr. Singer to Mr. Vandemoer. And although there's no question
13 that Mr. Vandemoer participated in this, Mr. Singer pushed, he
14 really pushed, and Mr. Vandemoer sort of responded by saying,
15 yes, yes. That clearly was a mistake. I have no doubt that he
16 knew what he was doing was probably wrong and he saw the
17 benefit to his program.

18 From what I know about the other cases, which is not
19 very much, and there appears to be a general agreement,
20 certainly among probation officers who are handling
21 collectively all of these cases, that Mr. Vandemoer is probably
22 the least culpable of all of the defendants in this group of
23 cases. I have not heard of anybody who is less culpable.
24 Certainly the parents are in a different position. The other
25 coaches benefited for themselves. They took money for

1 themselves. He did not do that. All the money that he got
2 went directly to the sailing program, and the initial payment,
3 as I understand it, was by him carefully suggested to be paid
4 in such a way that there was no suggestion that he would get
5 any of it, that it was to the program, it was paid to him for
6 the program. So the fact that he, as best as I understand, was
7 the least culpable of all of the coaches certainly has
8 something to say about what the sentence should be.

9 It is -- the Government agrees that he did not
10 personally gain any money from this. That he may have gained
11 some benefit from running a successful program that had a large
12 infusion of money is unquestionably true, but I don't know
13 what -- I mean, it's an advantage to him for sure, but I don't
14 think it's the kind of advantage that a coach got who actually
15 took the money and spent it on himself.

16 I do not understand that Mr. Vandemoer initiated this
17 entire process. It came to him through Mr. Singer, who then,
18 as I said before, continued to push. Everybody in his position
19 suffers large losses. It's just a given. And the loss is not
20 just yours. It is of course your family's as well.

21 I have read the letters of support, all 27 of them,
22 and I must say, they are an extraordinary group of letters.
23 The usual letters are perfunctory, one paragraph long, and
24 that's it. These are thoughtful letters, every last one of
25 them, thoughtful letters that speak of the person that they

1 know, whom they love, and whom they totally support. That is
2 highly unusual in this setting.

3 I do -- I am aware that these are serious offenses,
4 and I am aware of all the factors that I should take into
5 account including deterrence, and having in mind what other
6 defendants -- that there are other defendants, that whatever I
7 do may have a consequence with respect to other defendants, but
8 I find it hard in this case to suggest that Mr. Vandemoer
9 should go to jail for more than a year.

10 I also am aware of what has happened with respect to
11 another group of cases in this court of the state police
12 officers who really violated their trust and who took the money
13 for themselves and did terrible things to the department for
14 which they worked.

15 Sentencing is a difficult task. It is virtually
16 impossible, even for one judge who does it on a number of
17 occasions, to be consistent. I cannot claim to be consistent
18 because I just don't know how to be consistent. I try to be as
19 responsive to a particular situation as I can be. However, I
20 don't profess to be perfect in any of this.

21 I think it's important to have a punishment because
22 it's too easy to do this kind of thing. Money offenses are
23 easy to do, and it is important for those who do them to
24 understand that there are consequences. Nonetheless, I think
25 jail is not one of them in this case.

1 I sentence you to a term of imprisonment of one day
2 deemed served, a period of supervised release of two years, the
3 first six months of which shall be served in home confinement
4 with electronic monitoring. You shall pay a fine of \$10,000 in
5 such installments and at such times as directed by the
6 Probation Office, and you shall pay a special assessment of
7 \$100, of which I have no discretion. The period of supervised
8 release is governed by a number of conditions including the
9 statutory conditions and the mandatory conditions and a special
10 condition that you not incur any credit -- new credit accounts
11 and that you provide Probation with any financial information
12 that it seeks from you so long as the fine is not paid.

13 What did I leave out?

14 U.S. PROBATION: Just, Your Honor, with the home
15 detention and electronic monitoring, that he be required to pay
16 the costs of that.

17 THE COURT: Yes, yes. You need to pay for that as
18 well. That's it?

19 U.S. PROBATION: Yes, Your Honor.

20 THE COURT: That is the sentence of the Court. You
21 shall now report to your Probation Office, and I assume that at
22 some point it will need to be transferred to wherever
23 Mr. Vandemoer now lives, but at the moment he is subject to
24 probation -- supervision by the probation department in Boston.

25 MR. FISHER: Your Honor, can I just make one thing

1 clear? I brought this up earlier.

2 THE COURT: I'm sorry?

3 MR. FISHER: Can I make one thing clear? And I
4 brought this up earlier in the hearing. Can you make it clear
5 on the record that that would have been the sentence he would
6 have received under --

7 THE COURT: I'm sorry. I don't understand.

8 MR. FISHER: Can you make it clear that that would be
9 the sentence he would receive under any calculation of the
10 guidelines? I know we had a debate about the guidelines.

11 THE COURT: It is the sentence I imposed.

12 MR. FISHER: Okay.

13 THE COURT: I understand -- we discussed the
14 guidelines. I think I made a ruling as to what they were, and
15 this is the sentence I imposed. It is a varying sentence, a
16 variation from the guidelines. Not a departure. A variation.

17 MR. FISHER: Okay. Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. ROSEN: Nothing from the Government, Your Honor.

20 MR. FISHER: Thank you. Court is in recess. No.

21 Well, we're just briefly in recess.

22 (Adjourned, 3:19 p.m.)

23

24

25

1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Linda Walsh, Registered Professional Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter to the best of my skill and ability.

9 Dated this 13th day of June, 2019.

10

11

12 /s/ Linda Walsh

13 Linda Walsh, RPR, CRR

14 Official Court Reporter

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